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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

FLETCHER III, WILLIAM P

ART UNIT

PAPER NUMBER

1792

MAIL DATE

DELIVERY MODE

10/14/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/581,806	Applicant(s) VISKER, ANTONIUS CORNELIS H.M.	
	Examiner William P. Fletcher III	Art Unit 1792	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 30-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 30-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

1. The amendment filed after final on September 4, 2009, overcomes all of the rejections of record and has been entered.

Response to Arguments

2. Applicant's arguments, see the remarks, filed September 4, 2009, with respect to the rejection(s) of claim(s) 37 under 35 USC 112, 2nd paragraph, have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of WO 2004/092240 A1.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 30-48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

A. Claim 30 recites the term "paint-repellent layer," which is indefinite. This term, as discussed at page 6:22-26, essentially amounts to a release layer, and is interpreted as such. It is, however, unclear in what way the layer is "paint-repellent." What sorts of paints does it repel (water-based, solvent-based, etc.) and how does the paint-repellent nature of the layer relate to the claimed method

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and product, is the layer only paint-repellent insofar as it permits separation from the adhesive layer or is it inclusive of other, non-adhesive paint?

B. Claim 31 is similarly rejected by virtue of its incorporation of the subject matter of claim 30.

C. Claim 32 is similarly rejected by virtue of its incorporation of the subject matter of claim 30. Further, this claim recites that "the openings are configured in the shape of a cut." This phrase is indefinite since it is unclear what sort of cut the openings must be configured to resemble: the cut of a scissor, the cut of a scalpel, etc.

D. Claim 33 is indefinite for reciting "paint-repellent" as explained above. Further, this claim recites the term "the substrate," which lacks antecedent basis. Further, the relationship of the substrate to the other recited elements of the structure is unclear.

E. Claims 34-45 are similarly rejected by virtue of its incorporation of the subject matter of claim 33.

F. Claim 46 is indefinite for reciting "paint-repellent" as explained above.

G. Claim 47 is similarly rejected by virtue of its incorporation of the subject matter of claim 46.

H. Claim 48 is similarly rejected by virtue of its incorporation of the subject matter of claim 46. Further, this claim recites that "the openings are configured in the shape of a cut." This phrase is indefinite since it is unclear what sort of cut

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the openings must be configured to resemble: the cut of a scissor, the cut of a scalpel, etc.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

6. Claims 30, 31, 33, 34, 44, 46, and 47, are rejected under 35 U.S.C. 102(e) as being anticipated by WO 2004/092240 A1.

A. Claim 30

i. This reference teaches a process in which at least one cross-linkable polyurethane layers is applied to a release film (flat, flexible carrier), one of the polyurethane layers is porous (comprises openings). See 9:13-18; 10:4+; and 18:11; for example. As noted above, it is the Examiner's position that the release film of this reference reads on the

claimed "paint-repellent layer." Further, since the entire release film possesses release properties, it reads on the claim limitation: *wherein the carrier comprises a paint-repellent layer configured to attach and separate from the covering layer.*

B. Claim 31

i. Insofar as this reference teaches that the pores are formed by expandable particles having diameters on the order of 10-100 mm [16:3+], it is the Examiner's position that this is a fair teaching of pores sizes in such a range, which anticipates the limitations of this claim.

C. Claim 33

i. This reference further teaches that the polyurethane layer structure (cover layer) is attached to a substrate via an adhesive layer [10:11-14]. It is the Examiner's position that the adhesive, at least when applied, is in a non-cross-linked state, since an adhesive that has been cured and cross-linked before application would have no utility. As such, the limitations of this claim are met.

D. Claim 34

i. The adhesive is applied to the polyurethane cover layer prior to application to the substrate [page 10, steps C and D].

E. Claim 44

i. The smallest thickness taught for the structure applied in this reference is 0.016 microns [page 10, steps A-C].

F. Claims 46 and 47

- i. The method of this reference results in the product claimed, as explained above.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 41 and 45, are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 2004/092240 A1.

A. Claim 41

- i. While not expressly recited, it is the Examiner's position that an elasticizer is a common and conventional additive to an adhesive composition. Such an additive allows one skilled in the art to control the coating properties of the adhesive.

B. Claim 45

- i. The thicknesses recited in this references are merely approximate. The thickness of the cover layer structure is a result-effective variable affecting the feel of the overall structure and its suitability for end-use as synthetic leather. It would have been obvious to one skilled in the art to modify the process of this reference so as to optimize the thickness by routine experimentation. See MPEP 2144.05. Further, it is the Examiner's

position that the lower limit of approximately 0.16 mm is sufficiently close to the claimed upper limit of 0.1 mm so that one skilled in the art would have reasonably expected the two to have the same properties. See *Titanium Metals Corp. v. Banner*, MPEP 2144.05.

Allowable Subject Matter

9. Claims 32, 35-40, 42, 43, and 48, are rejected under 35 USC 112, 2nd paragraph, above, but contain allowable subject matter.

10. The following is a statement of reasons for the indication of allowable subject matter: With respect to claims 32 and 48, while it remain unclear what constitutes a configuration "in the shape of a cut," it is clear that in the cited art, the pores are not made by cutting or puncturing of any kind. As such, the limitations of this claim, as they are understood by the Examiner at this present time, are neither taught nor suggested by the prior art. With respect to claim 35, while it remains unclear what is meant by the adhesive layer's being a "paint," it is clear that the cited art, while it does teach a polyurethane-based resin adhesive, does not teach anything that can be deemed a paint within the common definition of the term (i.e., film-former, pigment, etc.). With respect to claims 36 and 37, the cited art neither teaches nor suggests a loose or woven fiber for the carrier film or cover layer structure. With respect to claims 38-40, the cited art neither teaches nor suggests the claimed spacers. With respect to claims 42 and 43, the cited prior art teaches a synthetic leather and neither teaches nor suggests application to a building structure.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William P. Fletcher III whose telephone number is (571) 272-1419. The examiner can normally be reached on Sunday, 5:00 AM - 12:00 PM and Monday through Friday, 5:00 AM - 3:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy H. Meeks can be reached on (571) 272-1423. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/William Phillip Fletcher III/
Primary Examiner, Art Unit 1792